

COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject

Right-of-Way Dedication and Public Improvement Requirements
in Connection With Zone Reclassifications

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Purpose

To establish a policy that prior to reclassification of property pursuant to The Zoning Ordinance, the applicant for such reclassification shall be required to provide those public improvements and facilities, and the lands, easements, and right-of-way therefore, necessary to make such property suitable for use in the proposed zoning classification. To supplement and modify the existing policy as stated in Part IV of San Diego County Road Policy adopted by the Board of Supervisors on March 20, 1962, and extend the principles stated therein to include all public improvements.

Background

In the past, when an owner has applied for reclassification (rezoning) of his/her property, the County has merely required, as a prerequisite to reclassification, that necessary rights-of-way for widening or establishing County highways be dedicated. This practice did not make provision for improvement of the right-of-way, for the dedication of easements for or construction of facilities for drainage, disposal of sewage or fire protection. As a consequence, property was frequently reclassified to permit a more intensive use or different uses without any assurance that the rights-of-way and public improvements and facilities needed for such use would be provided.

Policy

It is the policy of the Board of Supervisors that:

Where application is made pursuant to the Zoning Ordinance for reclassification of property and it is found that road improvements, drainage, sewage, fire protection, or other public facilities and improvements (including the land, easements and rights-of-way therefore), are necessary to the health, safety and general welfare of the public and to make the property suitable for the increased intensity of use or the different uses permitted by the proposed zone classification, such improvements and facilities (including the land, easements and rights-of-way therefore) shall be required or provisions made therefore before property is reclassified.

When, after hearing on an application for a zone reclassification pursuant to the Zoning Ordinance, it is determined that the increased intensity of use or different uses permitted by the requested zone reclassification would be appropriate except for the fact that necessary public rights-of-way, improvements or facilities either do not exist or are below San Diego County standards, the applicant shall be given the opportunity to provide the required improvements and facilities (including land, easements and rights-of-way) by one of the procedures listed below. In any such case where the Planning

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Commission recommends the reclassification, the Planning Commission should also recommend one of the following procedures which in its opinion is best suited to carry out this policy:

1. Filing of a Final Subdivision Map

The ordinance reclassifying the property will provide that it shall take effect only if within two years from the date of its adoption a final subdivision map of the property is filed pursuant to the San Diego County Subdivision Ordinance.

2. Entering into a Secured Agreement with the County

Prior to the adoption of the ordinance reclassifying the property, the owner shall:

- a. Dedicate or irrevocably offer for dedication the required land, easements, and rights-of-way; and
- b. Enter into an agreement to provide the required improvements and facilities, which agreement shall be secured by a security in a form satisfactory to County Counsel.

3. Executing a Lien Agreement

Prior to the adoption of the ordinance reclassifying the property, the owner shall:

- a. Dedicate or irrevocably offer for dedication the required land, easements and rights-of-way; and
- b. Execute a lien agreement by which an owner(s) for his/her successors and assigns, that in lieu of making the ultimate improvements, that he/she will install, construct or cause to be installed or constructed the required ultimate improvements at a future time satisfactory to the County.

4. Executing a Covenant

Prior to the adoption of the ordinance reclassifying the property, the owner shall:

- a. Dedicate or irrevocably offer for dedication the required land, easements and rights-of-way; and

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b. Execute a covenant by which he/she covenants for himself/herself, his/her successors and assigns, not to oppose the initiation by the County of special assessment (improvement act) proceedings for the construction of the necessary improvements and facilities.

Procedures Pursuant to Board of Supervisors Policy No. I-17

The following procedures shall be utilized in implementation of this Policy.

PREAPPLICATION PROCEDURES

A. Wherever possible prior to filing of an application, the Department of Planning and Development Services shall offer each prospective applicant for a zone reclassification a form statement explaining the reclassification process. Said statement will include an explanation of the possible responsibility of the applicant for provision of necessary public rights-of-way and improvements pursuant to this Policy.

B. When an application for zone reclassification is proposed to be filed and it appears to the Department of Planning and Development Services that the subject property cannot be properly developed for uses permitted under the proposed zone classification unless the land is further divided into lots or unless public roads and other improvements are provided, the Department of Planning and Development Services shall encourage the applicant to file a tentative subdivision map for concurrent consideration with the application for reclassification.

PROCEDURE FOR PROCESSING APPLICATIONS

A. After acceptance of an application, the Department of Planning and Development Services shall promptly transmit a copy of the application, along with an Assessor's Parcel Map showing the subject property, to the County Department of Public Works. The Department of Planning and Development Services shall then process the application in the usual manner.

B. Upon receipt of the transmittal from the Department of Planning and Development Services, the Department of Public Works shall investigate the need for road right-of-way and road improvements and shall identify such needs in sufficient detail that it is clear what the extent of the applicant's responsibility may be in the provision of such right-of-way and improvements.

C. Upon receipt of the transmittal from the Department of Planning and Development Services, the Department of Public Works shall make its investigation relative to:

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1. Drainage and flood control matters, and

2. Provision of sewer when area under consideration is within a County Sanitation District.

Needs relative to these matters shall be identified in sufficient detail that it is clear what the extent of the applicant's responsibility may be in provision for drainage and flood control facilities and sewer services.

D. If the subject property is determined to be located in a water or sewer district not under the jurisdiction of the County, it shall be the applicant's responsibility to file with the Department of Planning and Development Services prior to the Planning Commission hearing, a statement from the appropriate district or districts that necessary services can be provided.

E. Prior to the Planning Commission hearing, representatives of the Department of Planning and Development Services, and the Department of Public Works shall review and discuss the results of their respective investigations and formulate recommendations to the Planning Commission relative to matters of right-of-way and public improvements in connection with reclassification applications.

At the discretion of the Director of Public Works, the recommendation for the needed public improvements submitted to the appropriate approval body could allow for the construction of all or a portion of the improvements to be deferred to a later time. The construction of such improvements would have to be secured by the execution of a lien contract agreement or other appropriate security.

Drafting of the staff report of recommendations to the Planning Commission shall be the responsibility of the Department of Planning and Development Services.

PLANNING COMMISSION HEARING AND ACTION

A. At its hearing the Planning Commission shall consider the recommendations of the staff and any testimony offered relative to public rights-of-way and improvement needs.

B. When the Planning Commission determines that a proposed reclassification would be appropriate except for the fact that necessary public rights-of-way and/or improvements either do not exist or are below San Diego County standards, the applicant shall be given the opportunity to provide for such public rights-of-way and/or improvements. To this end, the Commission shall recommend to the Board of Supervisors that the application

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for reclassification be approved according to an appropriate method of providing for necessary rights-of-way and/or improvements as set forth in this Policy.

C. When the Planning Commission recommends the preparation of right-of-way documents, a secured agreement, lien or a covenant separate from the filing of a final subdivision map, the applicant shall have accomplished one of the following as recommended by the Planning Commission before the Department of Public Works will docket the reclassification for the Board of Supervisors consideration:

1. Dedicated or irrevocably offered for dedication the necessary rights-of-way and entered into a secured agreement providing for required improvements, or
2. Dedicated or irrevocably offered for dedication the necessary rights-of-way and entered into a lien agreement providing for the required improvements, or
3. Dedicated or irrevocably offered for dedication the necessary rights-of-way and entered into a covenant not to oppose future assessment proceedings for required improvements.

D. When the Planning Commission does not recommend the filing of a final subdivision map, but recommends the preparation of right-of-way documents, a secured agreement, lien or a covenant, it shall be the responsibility of the Department of Planning and Development Services to prepare the Commission's Report to the Board of Supervisors along with the draft ordinance and forward the package to the Department of Public Works. The Department of Public Works will hold the Report until all required documents are satisfactorily executed.

E. Upon notification by the Department of Planning and Development Services that a method other than the filing of a final map is recommended, it shall be the responsibility of the Department of Public Works and the Department of General Services to assist the applicant to prepare and obtain execution of necessary documents for dedications and agreements prior to the consideration by the Board of Supervisors. It shall be the responsibility of the applicant to provide said Departments with the title report or lotbook report, legal description and plat adequate to facilitate the preparation of such documents and to properly execute the documents when furnished and to return them promptly to the Department of Public Works. Every effort shall be made by the Departments to coordinate such efforts when appropriate and to consolidate their requirements into as few documents as possible. All legal documents shall be reviewed by County Counsel.

F. It shall be the responsibility of the Department of Planning and Development Services to provide overall coordination and to prepare the Planning Commission's

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recommendation for advertising and docketing. It shall be the responsibility of the Department of Public Works to assure that all necessary right-of-way, agreement, lien and covenant documents have been prepared and properly executed before the rezone case is docketed with the Clerk of the Board. The Board of Supervisors' response and all documents shall be forwarded to the Clerk of the Board as soon as complete documents for each hearing are ready.

General Plan Amendment/Rezone case documents in final form must be delivered to the Department of Public Works a minimum of 5 working days prior to the scheduled initial Board of Supervisors' hearing on the rezone

APPEAL FROM PLANNING COMMISSION DENIAL

Should the Planning Commission deny a reclassification, and if the applicant appeals that decision, as required by Section 7506(d) of The Zoning Ordinance, the Department of Planning and Development Services will be responsible for preparing the Planning Commission Report and for docketing the case for hearing with the Clerk of the Board. The applicant will not be required to complete the recommended conditions prior to the Board hearing.

If during the Board hearing, the Board takes tentative action to approve the reclassification, the case will be continued to allow sufficient time for the applicant to complete any Board imposed conditions, prior to the final approval of the reclassification.

BOARD OF SUPERVISORS HEARING AND ACTION

At its hearing the Board of Supervisors shall consider the recommendation of the Planning Commission, the presentation of the Department of Planning and Development Services and any testimony offered relative to public right-of-way and improvement needs and may accept, reject or modify the recommendation of the Commission.

When the Board of Supervisors determines that a proposed reclassification would be appropriate, except for the fact that necessary public rights-of-way and/or improvements either do not exist or are below San Diego County standards, the applicant shall be given the opportunity to provide for such public rights-of-way and/or improvements under one of the following actions pursuant to this Policy. The Board, under these circumstances, shall take one of the following actions:

1. Adopt an ordinance reclassifying the property, said reclassification to become effective if within two years a final subdivision map of the subject property which

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makes provision for needed public rights-of-way and/or improvements is filed with the County Recorder.

2.Continue the Board hearing within the limits set by State law for execution of all necessary documents.

POST HEARING PROCEDURE

A. Provisional Reclassifications:

When the Board of Supervisors has adopted an ordinance approving a reclassification to become effective upon filing with the County Recorder of a final subdivision map of the subject property, the Department of Planning and Development Services shall cause one copy of such ordinance to be made part of the tentative map file at the time the applicant submits such tentative map of subject property for approval. Therefore, such tentative map and each revision thereof shall carry a record of the number of the ordinance reclassifying said property and all actions relative to such subdivision map shall take cognizance of the relationship of such subdivision map to said ordinance. When the final subdivision map is transmitted by the Department of Public Works to the Board of Supervisors for approval, the letter of transmittal shall indicate the relationship of such final map to the reclassification ordinance.

After the Board approval, the final subdivision map is filed with the County Recorder. Upon filing, the reclassification becomes effective and the provisional status of the zoning no longer exists. The Board's approval action will also include direction to the Department of Public Works to delete the provisional classification affixed to the official zoning map immediately after map recordation.

B. Reclassifications Not Involving Final Maps

When the Board of Supervisors has approved the reclassification pursuant to the executed right-of-way documents, agreement, lien or covenant conditions having been complied with, those documents shall be accepted and recorded by the Clerk of the Board. The reclassification will become effective in the time specified in the County Code.

Sunset Date

This policy will be reviewed for continuance by 12-31-15.

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Board Action

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10-14-69(79)
11-10-69(86)
11-5-75(3)
5-22-79(150)
7-26-88(43)
12-12-89(49)
3-27-90(47)
5-15-96 (5)
06-18-03 (9)
12/09/08 (33)
09/25/2012 (11)

CAO Reference

1. Department of Planning and Development Services
2. Department of Public Works
3. Department of General Services